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Attorney Docket: 1073-46



## **SUMMONS ISSUED**

# IN THE UNITED STATES DISTRICT LINE - 3204

P22 TYPE FOUNDRY, INC.,

Plaintiff,

-against-

UNIVERSAL STUDIOS, INC.,

NBCUNIVERSAL MEDIA, LLC,

NANCO-NANCY SALES CO.,

SCREENWORKS USA, INC., and

JOHN DOE,

Defendants.

WEINSTEIN, J.

**COMPLAINT** 

(Jury Trial Demanded)

AZRACK, M.J.

Plaintiff, P22 TYPE FOUNDRY, INC. ("P22"), by and through its attorneys, The Martinez Group PLLC, for its Complaint against Defendants, UNIVERSAL STUDIOS, INC., NBCUNIVERSAL MEDIA, LLC, f/k/a NBC Universal, Inc. (hereafter referred to individually and/or collectively as "Universal"), NANCO-NANCY SALES CO. ("Nanco"), SCREENWORKS USA, INC. ("Screenworks"), and JOHN DOE (collectively, "Defendants") alleges as follows:

## NATURE AND SUBSTANCE OF THE ACTION

- Plaintiff files this action against Defendants for Copyright infringement under 17 U.S.C.
   § 101, et seq., and Breach of Contract under applicable State Law.
- 2. This action is brought in response to a classic case of Copyright infringement, specifically the creation and for profit sale of goods created using unlicensed copies of Plaintiffs Copyrighted software.
- 3. In particular, Defendants have created, used, distributed or caused others to create, use or distribute Plaintiff P22's CEZANNE REGULAR font software as a resource in the creation of Defendants' Harry Potter merchandise including, *inter alia*, the "Hedwig Pillow," "Dragon Bright Youth T-Shirt," "Dragon Sketch T-Shirt," "Ministry of Magic Messenger Bag," "Ministry of Magic Ladies T-Shirt," "Dementors Ladies T-Shirt," "Ministry of Magic Cap," "Dementor Cap," "Dementor Name Pin" and "Hogwarts Stationary Set" (collective, the "Merchandise") which have been made available for sale via Defendant Universal's recreational theme park and via the Internet.
- 4. By reason thereof, Defendants' goods have been distributed throughout the world and throughout the United States.
- 5. Title 17 of the United States Code (Copyright Act) was enacted to provide remedies to copyright owners who suffer damages by reason of such actions.

### **JURISDICTION AND VENUE**

6. This is an action for Copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., and for the related claims of Breach of Contract under applicable State laws, which seeks damages by reason of Defendants' ongoing infringement of P22's valid and subsisting Copyright.

- 7. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1332, 1338(a) and 1338(b), its supplemental jurisdiction, and under Rule 4 of the Federal Rules of Civil Procedure.
- 8. Venue is proper in this district under 28 U.S.C. §1391 and §1400 in that Defendants or Defendants' agents may be found in this District and Defendants transact business in this District.

#### **PARTIES**

- 9. Plaintiff, P22, is a Delaware corporation with an office at 48 Berkley Place, Buffalo, New York 11215.
- 10. Defendant Universal Studios, Inc. is a Delaware corporation with its principal place of business located at 100 Universal City Plaza, Universal City, California 91608.
- 11. Defendant Universal Studios, Inc. is authorized by the New York Secretary of State to conduct business in the State of New York.
- 12. Defendant NBC Universal Media, LLC is a Delaware corporation with its principal place of business located at 30 Rockefeller Plaza, New York, New York 10112.
- 13. Universal is a film and entertainment media company that creates, inter alia, television and film programming.
- 14. Universal also designs, manufactures and distributes merchandise which is related and adjuvant to their feature films, such as those associated with the world famous Harry Potter film series.
- 15. Universal makes such goods available at the Universal Theme Park, Universal Orlando Resort: The Wizarding World of Harry Potter at Universal's Islands of Adventure.

- 16. Universal also conducts business on the Internet via an online store, located at http://www.universalorlando.com/home/home.aspx.
- 17. The goods sold by Universal via the Internet and at its recreational theme park form the basis of the allegations made herein.
- 18. Upon information and belief, Universal Studios Inc. is wholly owned by Defendant NBC Universal Media LLC.
- 19. Upon information and belief, Universal contracted with Defendants Nanco, Screenworks and John Doe to manufacture and distribute the Harry Potter merchandise at issue in this matter.
- Defendant Nanco-Nancy Sales Co., Inc. is a corporation with its principal place of business located at 22 Willow Street, Chelsea, Massachusetts 02150.
- 21. Upon information and belief, Nanco is a manufacturer and vendor of merchandise including, among others, the Harry Potter merchandise at issue in this matter.
- 22. Defendant Screenworks USA, Inc. is a Florida corporation with its principal place of business located at 2234 Taft Vineland Road, Orlando, Florida 32837.
- Upon information and belief, Screenworks is a manufacturer and vendor of merchandise including, among others, the Harry Potter merchandise at issue in this matter.
- 24. Upon information and belief, Defendant John Doe is a manufacturer and vendor of merchandise including, among others, the Harry Potter merchandise at issue in this matter.
- 25. Upon information and belief Defendants conduct business throughout the United States, around the world and within the State of New York and in the County of Kings.

### **FACTS COMMON TO ALL CLAIMS**

- 26. P22 is engaged in the business of designing, creating, producing, marketing, and licensing the use of computer software in the nature of, *inter alia*, type face fonts and art design works in digital formats for use with personal computers and commercial typesetting devices, among others.
- 27. Plaintiff P22 is the exclusive owner of the U.S. Copyright with Registration Number TX 6-006-515 for the Computer Program for the CEZANNE Type Font; a copy of which is annexed hereto as Exhibit A.
- 28. The individual CEZANNE REGULAR type face font software forms part of P22'S copyrighted Cezanne Type Font Software (collectively, "CEZANNE Font Software").
- 29. P22 created and is the exclusive owner of the copyrighted software for the CEZANNE REGULAR type face font, a showing of which is annexed hereto as Exhibit B.
- 30. Plaintiff's CEZANNE Font Software has enjoyed copyright protection since August 27, 2004.
- 31. P22's Copyright is valid and subsisting.
- 32. P22 is and has been at all times alleged herein, the sole owner of all rights, titles, and interests in, and to, the CEZANNE Font Software together with the individual artworks and designs embodied therein.
- 33. P22 has sold and continues to sell, and derive significant revenue from the sale of licenses to use its CEZANNE Font Software, and the licensing of the various artworks embodied therein.

- 34. P22 controls the use of its Fonts Software by means of its End User License Agreement ("EULA") which specifically prohibits the uses complained of herein without the purchase of a special license. A copy of P22's EULA is annexed hereto as Exhibit C.
- 35. Plaintiff's records show that Defendant Screenworks USA, Inc. has purchased a basic license to use the CEZANNE Font Software which does not permit the uses complained of herein.
- 36. Moreover, Defendant Screenworks purchased the basic license to use Plaintiff's Font Software after the conduct at issue in this matter had already occurred.
- 37. Plaintiff's records show that the other Defendants have purchased no licenses of any kind to use the CEZANNE Font Software in the manner complained of herein.

### **DEFENDANT'S ACTIONS**

- 38. Defendants have used or caused others to use the CEZANNE Font Software in the creation of Universal's Harry Potter merchandise including, but not limited to, the "Hedwig Pillow," "Dragon Bright Youth T-Shirt," "Dragon Sketch T-Shirt," "Ministry of Magic Messenger Bag," "Ministry of Magic Ladies T-Shirt," "Dementors Ladies T-Shirt," "Ministry of Magic Cap," "Dementor Cap," "Dementor Name Pin" and "Hogwarts Stationary Set" (the "Merchandise"), showings of which are annexed hereto as Exhibit D.
- 28. The above-identified merchandise is available for sale through, among others, Defendant Universal's website locate at:

  http://www.universalorlando.com/Merchandise/merchandisehome.aspx?ComponentId=1
  4497&SourcePageId=13128#6.

- 29. Defendants' use of the CEZANNE Font Software in the manners complained of herein is not permitted without the purchase of a regular and an additional special license upgrade.
- 30. The special license upgrade is only available directly from Plaintiff.
- 31. Plaintiff's records indicate that Defendant Screenworks has purchased a basic license to use the CEZANNE Font Software.
- 32. The basic license purchased by Screenworks does not permit the uses complained of herein and, furthermore, was purchased after the conduct complained of herein had occurred.
- 33. Plaintiff's records indicate that no other Defendants have purchased any license to use the Cezanne Font Software.
- 34. Plaintiff's records further indicated that Defendants have not purchased any of the special licenses required to use Plaintiff's CEZANNE Font Software in the manner complained of herein.
- 35. To the extent that Defendants or Defendants' agents may have purchased a license to use the CEZANNE Font Software, the uses complained of herein are not authorized under the basic license governed by P22's EULA, which prohibits, inter alia, the use of the Font Software to create goods for sale in the manner complained of herein.
- 36. Defendants' use of the CEZANNE Font Software in the manner complained of herein constitutes an infringement of P22's valid Copyright in and to the CEZANNE Font Software.
- 37. The natural, probable, and foreseeable result of Defendants' wrongful conduct has and continues to be to deprive P22 of the benefits and revenue from the sale of appropriate licenses to use the CEZANNE Font Software.

- 38. The natural, probable and foreseeable result of Defendants' wrongful conduct has and continues to be to injure P22's relationships with present and prospective customers who rely on the cachet that exclusive licensing creates in the various P22 Works.
- 39. P22 has lost, and will continue to lose, substantial revenue from Defendants' wrongful use, copying, distribution, and creation of unauthorized derivative Merchandise based upon the CEZANNE Font Software.
- 40. Defendants' wrongful conduct has deprived, and will continue to deprive, P22 of opportunities for expanding the goodwill associated with the CEZANNE Font Software.
- 41. Defendants have refused to cease and desist from infringing upon P22's valuable Copyright, despite several demands for such action.

### FIRST CAUSE OF ACTION COPYRIGHT INFRINGEMENT 17 U.S.C. § 501

- 42. P22 repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 41 inclusive and incorporates them herein by this reference.
- 43. Defendants have used and have caused others to use Plaintiff's CEZANNE Font Software in unauthorized manners in the creation of its various Harry Potter Merchandise.
- 44. By reason thereof, Defendants have infringed and will continue to infringe Plaintiff's valuable Copyright in and to the CEZANNE Font Software.
- 45. Defendants' actions constitute a past and ongoing infringement of Plaintiff's Copyright under 17 U.S.C. § 501.
- 46. Plaintiff is entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendants as a result of the

- acts of infringement alleged herein or to statutory damages of \$150,000 per infringement, whichever is greater.
- 47. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff but is not less than one million five hundred thousand dollars (\$1,500,000).
- 48. Plaintiff has no adequate remedy at law.

## SECOND CAUSE OF ACTION CONTRIBUTORY COPYRIGHT INFRINGEMENT

- 49. Plaintiff repeats and re-alleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 48 inclusive and incorporates them herein by this reference.
- 50. By reason of the acts complained of herein, Defendants have and will continue to knowingly engage in activities that systematically induce and materially cause others to contribute to the past and ongoing infringements of Plaintiffs Copyright in the CEZANNE Font Software (Copyright Registration Number: TX 6-006-515).
- 51. Defendants' actions complained of herein constitute contributory copyright infringement of Plaintiff's valid copyright.
- 52. Defendants have derived substantial benefit from the creation and use of unauthorized derivative versions of Plaintiff's CEZANNE Font Software.
- 53. Plaintiff is entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendants as a result of the acts of infringement alleged herein.

- At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff but is not less than one-million and five-hundred thousand dollars (\$1,500,000).
- 55. Plaintiff has no adequate remedy at law.

## THIRD CAUSE OF ACTION BREACH OF CONTRACT

- 56. Plaintiff repeats and re-alleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 55 inclusive and incorporates them herein by this reference.
- 57. To the extent Defendants or a representative of Defendants may have purchased a license to use the CEZANNE Font Software, the uses complained of herein are not authorized under any such license and represent a material breach of contract.
- Defendants, without a license permitting them to do so, have used, created, distributed and sold merchandise and goods for sale using Plaintiff's copyrighted CEZANNE Font Software.
- 59. Plaintiff's records indicate that Defendants are not licensed to use Plaintiff's Copyrighted CEZANNE Font Software.
- 60. Plaintiff's records indicate that Defendants are not licensed to use Plaintiff's Copyrighted CEZANNE Font Software in the creation of Merchandise and goods for sale.
- 61. Defendants were not otherwise authorized or permitted to create merchandise or goods for sale using Plaintiff's Copyrighted CEZANNE Font Software.
- 62. By reason thereof, Defendants' actions constitute a breach of any contract that may have existed between Defendants and Plaintiff.

- 63. Plaintiff is entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendants as a result of the acts of infringement identified herein or to statutory damages of \$150,000 per infringement identified herein, whichever is greater,
- At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff but is not less than one million five hundred thousand dollars (\$1,500,000),
- 65. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests and prays that this Court will:

- 1. Preliminarily and permanently enjoin and restrain Defendants, their officers, directors, principals, agents, servants, employees, successors, assigns, and all those in active concert or participation with them from:
  - (a) Imitating, copying, distributing, or making unauthorized use of P22's Registered Copyrights including the infringing uses of the CEZANNE Font Software;
  - (b) Manufacturing, creating, producing, advertising, promoting, or displaying any product created by way of the unauthorized use of P22's Copyrighted Works;
- 2. Direct that Defendants deliver for destruction at Defendants' expense, *inter alia*, all copies of the Harry Potter related goods and merchandise identified herein, together with any and all computer files, hard drives, computer programs, solid state drives, disks, CD-Rom's, DVD's, bearing unauthorized and infringing copies of the CEZANNE Font Software, together with any and all other recorded media and all other merchandise in

- Defendants' possession or under their control that were created or that bear the result of the unauthorized use of P22's Copyrighted works;
- 3. Direct the imposition of a constructive trust for all monies received by Defendants from the sale of all goods that are an infringing copy and/or unauthorized derivative works based upon Plaintiff's Copyrighted Work;
- 4. Direct that Defendants be required to pay P22 actual damages in the amount of \$150,000 Dollars per infringing use of Plaintiff's copyrighted work or Statutory Damages of \$1,500,000 under Copyright Law, whichever is greater, for all gains, profits, and advantages derived by Defendant though their infringement of P22's Copyrights;
- 5. Direct that Defendants be required to pay to P22 such other damages that it has sustained as a consequence of Defendants' unauthorized use, copying, and distribution of P22's Copyrighted Works;
- 6. Direct that Defendants be ordered to make a written report within a reasonable period of time to be filed with the Court detailing the manner of compliance with the requested injunctive and mandatory relief above;
- 7. Award P22 the costs of this action together with reasonable attorneys' fees; and
- 8. Award P22 such other and further relief as the Court may deem just and proper.

#### JURY DEMAND

Plaintiff, P22, hereby demands a trial by jury.

Dated: July 5, 2011

Respectfully submitted,
THE MARTINEX GROUP PLLC

By

Frank J. Martinez (FJM-2149) Attorney for Plaintiff P22 Type Foundry, Inc.

THE MARTINEZ GROUP PLLC 55 Washington Street, Suite 253-C Brooklyn, New York 11201 718.797.2341 Telephone 718.222.0481 Facsimile FM@martinezgroup.com

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## Certificate of Registrati 1



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has

been made a part of the Copyright Office records.

Register of Copyrights, United States of America

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\*17 U.S.C. § 505(e): Any person who knowingly makes a false representation of a meterial last in the application for copyright registration provided for by section 409, or in any written statement filled in connection with the application, shall be fixed not more then \$2,500.

June 1899—200,000 #U.S. GOVERNMENT PRINTING OFFICE: 1999-454-578/49
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View Shopping Cart/ Check Out

Homepage » P22 Type Foundry » Cezanne Pro Set

Desc.

Full Set

Singles

P22 Cezanne Pro Opentype includes full western and central European character sets and Cyrillic for typesetting in dozens of languages. It features several types of numerals, ligatures, snap-on swashes, and word glyphs. Cezanne Pro includes over 1,200 glyphs and "smart features" that will automatically substitute letter combination's to create an even more natural handwriting effect than was possible with the original P22

Cezanne Set.

Basic Opentype, True Type and Postscript versions of the single fonts are included for use in document applications such as MS Word.

This family is available at a discount in

Gézanne Regular

the Works Collection.

ORDER

**Cezanne Pro Set** -\$69.95

Preview in Typecaster

Additional Examples of this Font in use & Related Links

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Homepage » P22 Type Foundry » Cezanne Pro Set

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**Full Set** 

Singles

All fonts provided in Opentype, TrueType and Postscript formats

Cezanne Ligatures

Cezanne Regular

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Cezanne Regular -\$19.95

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Additional Examples of this Font in use & Related Links

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## P22 & P22 distributed End User Agreement

Please read before adding software to shopping cart

Thank you for purchasing P22 fonts. To ensure that P22 continues to bring you more exciting, historically relevant type, please take the time to read this agreement. It might not be the most fascinating read, but its very important and may answer many questions that you may have. Please register your fonts and remember that free software is an exception, not the rule.

- 1. Notice to user. You (End User) have not purchased the ownership rights to this font, but rather a license to use this font on a limited basis. Purchasing a license for any P22 font or font distributed by P22 (International House of Fonts, Sherwood Collection and other) via download, or e-mail, constitutes an agreement between P22 type foundry, Inc ("P22") and the end user of the enclosed typefaces ("software") that the terms and conditions of this contract will be followed. If the fonts are purchased in hard copy format (CD-ROM or floppy disk), removing the media from its protective sleeve (paper pouch, DVD cases, or other) in which the media is contained constitutes the same agreement. If you do not agree with the terms of this agreement return the complete package with the CD or floppy disk sleeve unopened to the place of purchase. If downloaded or received by e-mail, all files must be deleted. A signed affidavit may be required to receive a refund.
- **2. Grant of License.** The basic P22 distributed software license is limited for use on a total of 5 devices at one site for use on a single platform. A device is defined as a computer, printer, character generator, server or any other machine that uses font data to rasterize letterforms. A site is defined as one physical location. Platform refers to operating systems designated as 'Macintosh', 'Windows' or other.

A laptop may be one of the devices in the basic license of 5 devices as long as the laptop is associated primarily with the licensed location. Simply working offsite on a laptop is permissible in the basic license and is regarded as an extension of the "site". A laptop that transports work from one distinct network to another distinct network will require additional licensing. Work transported from one distinct network to another distinct network, via a laptop requires each network to be licensed properly.

Additional licensing is also required if you are installing the font(s) on more than 5 devices (Site License), or a LAN/WAN Server with more than 4 devices, or, if you and/or additional users will have access to the font(s) at more than one location (Corporate License), or, if your printer/service bureau is installing the fonts for job output for more than one-time use (Service Bureau). Upon completion of job, service bureau must delete the font software or purchase their own license.

\*\*To calculate the required additional license, call P22 at 716 885 4490 or visit: http://www.p22.com/licensing.html to receive a quote.

One copy of the font software may be made for backup. You may transfer the original software to another party provided All materials, including back-up copies are transferred and that the recipient agrees to the licensing terms and conditions contained in this agreement, and all copies are removed from the originating end user's (your) devices.

**3. Fair Use.** The basic P22 license is intended to accommodate personal use as in the course of everyday correspondence and document writing, or in the design of self-promotion pieces like business cards, newsletters and brochures. Other uses designated as "professional" or "commercial" may require additional licensing.

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